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December 8, 2014

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **GN Docket No. 14-28**
ET Docket No. 14-165, GN Docket No. 12-268
MB Docket No. 03-185, GN Docket No. 12-268 and ET Docket No. 14-175
WT Docket No. 14-170, GN Docket No. 12-268, RM-11395 and WT Docket No. 05-211
WC Docket No. 10-90
Notice of Oral Ex Parte Presentation

Dear Ms. Dortch:

On December 4, 2014, representatives of the Wireless Internet Service Providers Association (“WISPA”) met with Commissioner Mignon Clyburn and Louis Peraertz, Legal Advisor – Wireless, International and Public Safety, to discuss the above-referenced proceedings.¹ In addition to the undersigned, the WISPA representatives included the following:

Chuck Hogg, WISPA President, and President, Shelby Broadband, Simpsonville, KY;
Elizabeth Bowles, WISPA Legislative Committee Chair and Immediate Past President, and President CEO, Aristotle, Inc., Little Rock, AR;
Alex Phillips, WISPA Vice President and FCC Committee Chair, and CEO, Highspeedlink.Net, Harrisonburg, VA; and
S. Jenell Trigg, Member, Lerman Senter PLLC.

Open Internet Proceeding – GN Docket No. 14-28

Ms. Bowles and Messrs. Hogg and Phillips stated that their small businesses provide broadband Internet access service to rural, suburban and urban areas that lack choice in service providers. Like most WISPs, their businesses have extremely small staff, often just a few employees, and are focused on expanding their networks to new areas or upgrading their networks to increase speed and throughput to meet ever-increasing consumer demand. In addition to serving residential consumers, they explained that they also serve small businesses in

¹ See *Protecting and Promoting the Open Internet*, Notice of Proposed Rulemaking, 29 FCC Rcd 5561 (2014) (“NPRM”).



their local communities. They noted that they had constructed and are operating their networks with personal investments and private funding and without the benefit of federal subsidies.

The WISPA representatives emphasized the need for the Commission to take into account the interests of small business providers as it considers whether to adopt new open Internet rules. We noted that, according to the Commission, 17 broadband Internet access providers serve 93 percent of the population, meaning that over 3,000 broadband Internet access providers serve the remaining seven percent, and that a “one size fits all” regulatory model does not recognize the important distinctions between these two groups. We reiterated WISPA’s position² that, for a number of reasons, the “light touch” regulatory approach adopted in 2010³ should be retained and that small broadband Internet access providers should be exempt from any new rules the Commission may adopt.

First, increasing disclosure and regulatory burdens would require small broadband providers to increase staff, which would divert time, money and other resources away from build-out to compliance, a result that would slow deployment to rural, unserved and underserved areas in contravention to Commission policies. *Second*, we stated that small broadband providers complied with the 2010 rules and should not be subject to any rules the Commission may want to apply to those where the record demonstrated non-compliance. In short, small business broadband providers are not the source of the problems raised by the Commission and any new obligations are not justified. *Third*, additional disclosure obligations would not benefit consumers because, based on the experience of WISPs, consumers do not care about the potential sources of congestion and interference, but rather are concerned about pricing plans and speeds. Adding significant detail to open Internet disclosure statements would create consumer confusion and would be designed to protect the providers’ interests in ensuring that every potential source of congestion or interference were disclosed, making for a lengthy and non-user-friendly document. Moreover, these increased costs would be passed through to both residential and small businesses consumers that, in rural and low-income areas served by many WISPs and small ISPs, are least likely to be able to afford it. *Fourth*, the WISPA representatives stated that adding new regulations would deter deployment, investment and new entry by small, minority- and women-owned businesses. *Fifth*, we explained that increasing disclosure and reporting obligations would increase the enforcement risk, a result that would be inconsistent with a record that does not demonstrate bad behavior by small businesses.

It was suggested that a certification process for small broadband service providers would be a sufficient enforceable alternative to the proposed disclosures and would provide the Commission with assurances that consumers and other stakeholders have not been unreasonably discriminated against or harmed. The certification would require a small broadband provider under penalty of perjury to state that it had properly and accurately fulfilled its service

² See Comments of the Wireless Internet Service Providers Association, GN Docket No. 14-28 (filed July 16, 2014); Reply Comments of the Wireless Internet Service Providers Association, GN Docket No. 14-28 (filed Sept. 15, 2014); Letter dated from Stephen E. Coran, Counsel to the Wireless Internet Service Providers Association, to Marlene H. Dortch, FCC Secretary, GN Docket No. 14-28 (filed Nov. 14, 2014).

³ See *Preserving the Open Internet*, Report and Order, 25 FCC Rcd 17905 (2010), *aff’d in part, vacated and remanded in part sub nom. Verizon v. FCC*, 740 F.3d 623 (D.C. Cir 2014).



obligations as advertised and as required under the FCC's rules. WISPA also suggested that the certification requirement be accompanied by a "Consumer Bill of Rights" to be developed by the industry.

The WISPA representatives explained that the Commission had produced a wholly inadequate Initial Regulatory Flexibility Analysis ("IRFA") that failed to comply with the Regulatory Flexibility Act.⁴ The IRFA did not consider "significant alternatives" that would "minimize the impact on small businesses" and failed to include any information on WISPs, results that could have a detrimental effect on the record in this proceeding. The WISPA representatives reiterated their concern that the *NPRM* and IRFA treated all broadband Internet access providers the same, regardless of size, and did not consider the individual, much less the cumulative, effect of new regulations on small broadband providers, and residential and small business consumers they serve.

The WISPA representatives also explained their opposition to Title II authority. We discussed the uncertainty associated with the need to undertake a Section 10 forbearance analysis of each Title II rule and the time and money it would take to participate in those proceedings. While the notion of forbearance may be generally accepted, considering which specific rules that would be subject to forbearance was extremely uncertain. So would the actions of future Commissions that may wish to change forbearance positions.

As one example, the WISPA representatives pointed to Sections 206 and 207 of the Communications Act of 1934, as amended, which allows private parties to collect damages. We explained that this would be an invitation for consumers to file uninformed or frivolous complaints with the Commission that the small broadband provider would be ill-equipped to defend. As an example, a consumer could simply allege that its small broadband provider was throttling traffic without specific facts or evidence. The provider would need to preserve traffic records for an undetermined time in order to justify that its network management practices were "reasonable" for the small provider. The complaint proceeding could last several months and cost the provider a significant amount of time and money to defend. We added that small broadband Internet access providers would more likely be the targets of such complaints because they would be least able to expend the resources necessary to endure complaint proceedings.

Part 15 NPRM – ET Docket No. 14-165, et al.

Commissioner Clyburn asked about WISPA's position on the *Part 15 NPRM*.⁵ We explained that WISPA generally supported the rules proposed by the Commission insofar as they would increase use of unlicensed TV band spectrum. Increasing power, relaxing out-of-band

⁴ See Regulatory Flexibility Act of 1980, Pub.L.No. 96-354 Section 2 (1980); see generally 5 U.S.C. §§ 601 *et seq.* In addition to its Comments in response to the *NPRM*, WISPA filed separate Comments regarding the Commission's Initial Regulatory Flexibility Analysis. See Comments of the Wireless Internet Service Providers Association Regarding the Initial Regulatory Flexibility Analysis, GN Docket No. 14-28 (filed July 16, 2014).

⁵ See Amendment of Part 15 of the Commission's Rules for Unlicensed Operations in the Television Bands, Repurposed 600 MHz Band, 600 MHz Guard Bands and Duplex Gap, and Channel 37, Notice of Proposed Rulemaking, ET Docket No. 14-165 and GN Docket No. 12-268, FCC 14-144 (rel. Sept. 30, 2014).



emission and spectrum usage restrictions and incorporating flexible deployment in the geolocation database were identified as examples of proposed rules that would benefit WISPs and consumers.

LPTV Proceeding – ET Docket No. 03-185, et al.

Commissioner Clyburn asked about WISPA's positions in the proceeding involving low power television stations.⁶ The WISPA representatives stated that the Commission should consider whether unbuilt LPTV permits should be extended (or subject to multiple extensions) and, if so, for how long. We also emphasized the benefits of allowing unlicensed operations on channels allocated to unbuilt LPTV permittees.

Competitive Bidding NPRM – WT Docket No. 14-170, et al.

Commissioner Clyburn asked about WISPA's positions in the competitive bidding rulemaking proceeding.⁷ We explained that WISPA generally supported proposed rules that would extend bidding credits to more small businesses, increase bidding credit amounts and promote market entry by small businesses.

Connect America Fund – WC Docket No. 10-90

The WISPA representatives stressed the need to ensure that all residences have access to broadband speeds of 4 Mbps downstream/1 Mbps upstream before subsidizing faster speeds. We also urged the Commission to retain the 4/1 broadband speed criterion for "unsubsidized competitors" so that areas currently served by unsubsidized competitors like WISPs are not, by regulatory fiat, suddenly deemed to be unserved and thus eligible for overbuilding by subsidized price cap carriers. The WISPA representatives also emphasized the importance of ensuring that all unserved areas, rural, urban or suburban, be served first before undertaking efforts to subsidize faster speeds.

⁶ See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Third Notice of Proposed Rulemaking, MB Docket No. 03-185, GN Docket No. 12-268 and ET Docket No. 14-175, FCC 14-151 (rel. Oct. 10, 2014).

⁷ See Updating Part 1 Competitive Bidding Rules, Notice of Proposed Rulemaking, WT Docket No. 14-170, GN Docket No. 12-268, RM-11395 and WT Docket No. 05-211, FCC 14-146 (rel. Oct. 10, 2014).

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Pursuant to Section 1.1206 of the Commission's Rules, this letter is being filed electronically via the Electronic Comment Filing System in the above-captioned proceedings.

Respectfully submitted,



Stephen E. Coran
*Counsel to the Wireless Internet Service
Providers Association*

cc: Commissioner Mignon Clyburn
Louis Peraertz